MALAYAN UNITED FINANCE BHD.

v.

NOORMURNI SDN. BHD & ANOR.

SUPREME COURT, KUALA LUMPUR
WAN SULEIMAN SCJ
HASHIM YEOP SANI SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 280 OF 1985]
31 OCTOBER 1987

CIVIL PROCEDURE: *1st Civil Suit filed against 1st respondent - Hire purchase of vehicles transaction - Appellants failed to obtain summary judgment under O. 14 RHC - Respondent given unconditional leave to defend by SAR - 1st Suit discontinued by appellants with liberty to file afresh - No appeal from decision of SAR - 2nd Suit filed by appellants who again sought to obtain summary judgment under O. 14 - Appellants allowed to enter final judgment in 2nd Suit by SAR - Whether decision of SAR in 1st Suit regarded as a final one and doctrine of "issue estoppel" would apply.*

The appellants who filed a suit against the 1st respondent (1st suit) in respect of hire purchase of motor vehicles transaction sought to obtain summary judgment under O. 14 of the Rules of the High Court 1980 but the respondents were given unconditional leave to defend. The appellants who did not appeal against this decision of the Senior Assistant Registrar discontinued the 1st suit with liberty to file afresh. The appellants then filed a fresh suit (2nd suit) on the same subject save that the 1st suit was in respect of 8 out of the 9 vehicles and again sought to obtain summary judgment which the SAR granted.

On appeal to the High Court, the learned Judge allowed the respondents' appeal against the decision of the SAR made on 6 February 1985. Hence, this appeal by the appellants.

The issue was whether the decision of the SAR in the 1st suit in reference to the O. 14 application was to be regarded as a final one and the doctrine of "issue estoppel" would apply against the appellants.

Held:

[1] The Supreme Court agreed with the learned Judge that "issue estoppel" can arise even where a plea of *res judicata* cannot be established because the cause of action is not the same.

[2] The Supreme Court respectfully agreed with the learned Judge's statement of the law being "No doubt the giving of leave to defend cannot be said to be a final judgment but in respect of issue estoppel the question is not whether there is a judgment that is final but whether the issue that was adjudicated on was disposed of with finality."

[3] The doctrine of *res judicata* is not a technical doctrine applicable only to records but is a fundamental doctrine of all Courts that there must be an end of litigation. *Interest reipublicae ut sit finis litium.*

[Appeal dismissed with costs. Deposit to respondents to account of taxed costs.]

Case referred to:

Carl-Zeiss-Stiftung v. Rainer And Keeler Ltd. & Ors. (No. 2) [1966] 2 All ER 536

Legislation referred to:
Rules of the High Court 1980, O. 14

Others sources referred to:
Halsbury's *Laws of England*, 4th Edn., Vol. 16, para. 1530 & 1527

For the appellants - N. Chandran (T.J. Su with him); M/s. Adnan Sundra & Low
For the respondents - U. Harcharan Singh; M/s. Azman, Davidson & Co.

JUDGMENT

Wan Suleiman SCJ:

The appellants had by various hire purchase agreements hired out to the first respondent various motor vehicles, as set out in their statement of claim, the 1st respondent being a limited company and the 2nd respondent the guarantor of the 1st respondent.

The appellants have previously filed a suit, K.L. High Court Civil Suit No. C1129 of 1981 (the first suit) against the 1st respondent alone relating to the same subject save that the first suit was in respect of 8 out of the 9 vehicles.

In the 1st action the appellants unsuccessfully attempted to obtain summary judgment under O. 14, and the respondents were given unconditional leave to defend. The appellants discontinued their action and were granted liberty to file afresh.

There was no appeal from this decision which was made by the Senior Assistant Registrar. The appellants then filed the present suit, i.e. Civil Suit No. C83 of 1984 (the second suit), and again sought to obtain summary judgment under O. 14.

Counsel for the respondents submitted in the Court below that since the issues between the parties had been finally decided on the merits in the hearing before the Senior Assistant Registrar in the 1st suit where the appellants' application for summary judgment had been dismissed, and where no appeal had been lodged, that decision was to be regarded as a final one, and the doctrine of "issue estoppel" would apply against them.

The learned Judge in the Court below agreed with Counsel for the respondents and allowed their appeal against the decision of the Senior Assistant Registrar of 6 February 1985 wherein the latter had allowed the appellants to enter final judgment under O. 14 in the second Civil Suit.

We agree with the learned Judge that "issue estoppel" can arise even where a plea of *res judicata* cannot be established because the causes of action are not the same.

Halsbury's *Laws of England* - 4th Edn., Vol. 16 para. 1530 succinctly sets out the law, which is cited here-under:

> A party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of first and second actions are different, the finding on a matter which came directly (not collaterally or incidentally) in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive in a second action between the same parties and their privies. This principle applies whether the point involved in the earlier decision, and as to which the parties are estopped, is one of fact or one of law, or one of mixed fact and law. The conditions for the application of the doctrine have been stated as being that (1) the same question was decided in both proceedings; (2) the judicial decision said to create the estoppel was final; and (3) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

> Where one party has raised an issue which his opponent alleges is barred by issue estoppel the opponent can either plead the estoppel and leave the matter to be dealt with at the trial, or he can attempt to have the offending plea struck out.

It adopts the very words of Lord Guest's speech in *Carl-Zeiss-Stiftung v. Rainer And Keeler Ltd. & Ors. (No. 2)* [1966] 2 All ER 536 at 565, referred to by the learned Judge in his judgment.

We need only deal with the only other point taken up on behalf of the appellants by Mr. Chandran. It is clear to us that learned Counsel has misread the judgment because his contention here is that the learned Judge had erred in law in holding that even if first defendant was given unconditional leave to defend (in K.L. High Court C.S. No. C1129 of 1981), the granting of such unconditional leave to defend to the first respondent/first defendant operates to estop the appellant from proceeding with an application for summary judgment in the second action i.e. C.S. No. C236 of 1981. What the learned Judge did say in his judgment was, and we quote,

> No doubt the giving of leave to defend cannot be said to be a final judgment but in respect of issue estoppel the question is not whether there is a judgment that is final but whether the issue that was adjudicated on was disposed of with finality.

We would respectfully agree with the learned Judge's statement of the law aforementioned having regard to the passage in Halsbury's we had considered earlier and to the authorities cited therein.

As is stated at para. 1527 of the same volume of Halsbury's, the doctrine of *res judicata* is not a technical doctrine applicable only to records, but is a fundamental doctrine of all Courts that there must be an end of litigation. *Interest reipublicae ut sit finis litium.*

Accordingly this appeal is dismissed with costs here and below. Deposit to respondents to account of taxed costs.

Also found at [1988] 1 CLJ 149